After giving the matter very careful consideration I do not think the admission of the evidence in question in the circumstances of this case could have influenced the learned District Judge in coming to his decision.

Further the learned District Judge held that the complainant was not an accomplice. This is often a difficult question and it was discussed by Murray-Aynsley C.J. in *Tan Yook Suan* v. *Regina* [2]

In the present case the complainant reported the matter to the Corrupt Practices Investigation Bureau and thereafter at their suggestion cooperated with them in laying a trap to catch the appellant.

Prior to this the complainant was never at any time prepared to accede to the appellant's request to give him his wrist band and when the appellant substituted a demand for money he put him off until the case against him was over in the hope no doubt that the matter would not be raised again. When it was by the appellant sending a police patrol to fetch him to the Police Station two days after the case was in fact withdrawn he at once reported the matter to the Corrupt Practices Investigation Bureau. The complainant was not, in my opinion, an accomplice.

A number of other points were raised in argument directed mainly to the question of the learned District Judge having misdirected himself on a number of matters. There is, in my view, no substance in them. They depend to a very large extent on the evidence and on the view the learned District Judge took of it. There was, in my opinion, evidence to support his findings and I can see no reason for disturbing them.

Finally, considerable importance was attached to the appellant's diary as indicating the physical impossibility of the complainant seeing him when the complainant said he did. This was adequately dealt with by the learned District Judge and after a careful examination of both the diary and the evidence on the subject, I am not prepared to say that his conclusions were unjustified or the result of misdirection.

In the result the appeal must be dismissed and the conviction and sentence affirmed.

Appeal dismissed.

Solicitors: *Marshall & Smith.*

CHARNLEY v. CHARNLEY AND BETTY

[O.. C. J. (Rigby J.) May 4, 1959]

[Penang — Divorce No. 3 of 1957]

Divorce — Husband's adultery in England while wife in Malaya — Jurisdiction — Domicile of parties — Divorce Ordinance, 1952, s.5(1)(c) and (d).

Practice and Procedure — Service of petition of divorce — Respondents in England.

This was a wife's petition for divorce on the ground of her husband's adultery. The petitioner, a Chinese British subject, married the first respondent, also a British subject, in 1947 at Butterworth where he was serving with the R.A.F. Soon after their marriage she followed her husband to England when he was demobilized and obtained civilian employment. In 1952 the petitioner's health was ailing and on her doctor's advice she returned to Malaya on the understanding that it was a temporary parting and she had every intention of returning to her husband. Some months after her arrival in Malaya she wrote to her husband for maintenance, but he replied that he could not afford to send her any money. When she later wrote saying that she wanted to return to England, he replied that he had no money to pay for her return passage. As time passed by letters from her husband ceased, but she continued to receive letters at varying intervals from her father-in-law. These letters progressively demonstrated his increasing disapproval of his own son's conduct and behaviour. In a letter written in 1954 he said that his son was living with Betty the co-respondent, and in January 1955 he wrote that Betty had herself had a baby and referred to the fact that "over 12 months ago" he begged his son "to leave Betty while she had no claim on him . . . ., but he refused", and added "Now she has a claim and I cannot see him leaving her." All these letters were written in affectionate strain. The Court accepted the authenticity and truth of those letters and found adultery proved. On the question of jurisdiction,

Held: (1) before the Court could grant the petition it required to be satisfied that it had jurisdiction to do so. The domicile of a married woman is that of her husband while the marriage subsists, even though the parties may be living apart;

(2) under section 5(1)(c) where a decree of dissolution on the ground of adultery or cruelty is sought it is sufficient if either the marriage was solemnized in the Federation or the adultery was committed in the Federation. It follows that in this case the Court had jurisdiction to entertain the petition.

In considering clause (d) of section 5(1) the Court was satisfied that the petitioner was prevented from taking proceedings in England on account of financial considerations and it was further satisfied that in the interest of justice it was desirable that the suit should be determined in the Federation.

Question of proper service of petition considered.

DIVORCE PETITION.

M. Abraham for the Petitioner.

Respondents did not enter appearance.

Rigby J.: This was a wife's petition for divorce on the ground of her husband's adultery. Since the matter may hereafter require some consideration elsewhere it is perhaps desirable that I should state the grounds on which I considered it proper to grant her a decree.

2. The petitioner was married to the respondent, Desmond Thomas Charnley on the 15th February, 1947, at the Roman Catholic Church at Butterworth, Province Wellesley in the Federation of Malaya. At the time of the marriage the petitioner was aged 19 and the respondent, 21. The petitioner's maiden name prior to her marriage was Shirley Ann Wee. She is of the Chinese race and was born in Butterworth, Province Wellesley, in 1928. At the time of her marriage her husband, a British subject, was serving with the R.A.F. Station at Butterworth. The petitioner is, therefore, a British subject both by birth and by virtue of her husband's nationality. After their marriage the parties lived and cohabited together in Butterworth until they sailed together for England on the 6th March, 1947. Shortly after their arrival in

England the husband was demobilized and obtained civilian employment with a well-known shipping firm in Liverpool. They lived together at various addresses in Liverpool until 1952. During that period there were two children of the marriage, a girl born in October, 1947, and a boy born in November, 1948. According to the petitioner, apart from some minor quarrel over a girl named Betty, whom they met at a dance and to whom her husband appeared to be attracted, the marriage was a reasonably happy one.

In the early part of July, 1952, the petitioner's health was ailing. She was losing weight and her Doctor recommended a temporary change to a warmer climate. It was accordingly agreed that she should return to her home in Malaya for a short visit of about six months. The husband borrowed the money to pay for her passage. According to the petitioner's evidence, which I accepted, she and her husband parted on perfectly happy terms. It was clearly understood that it was only to be a temporary parting and she had every intention of returning to England and to her husband and two children. She left England alone in July, 1952, and arrived in Penang in August. On arrival in Malaya she stayed with her mother in Butterworth. After she had been here for some months she wrote to her husband for maintenance. The husband replied that whilst she was away from him living in Malaya he could not afford to send her money. After she had been in Malaya for about six months she wrote to her husband saying that she wanted to return to England. According to her testimony, her husband replied to that letter saying that he had no money to pay for her return passage, and even if he had he did not propose to pay for it. Neither of those letters have unfortunately been produced in evidence. The petitioner said that she had destroyed them. Having regard to the lapse of time since they were written it is not entirely surprising that they have been lost or destroyed. At that time the petitioner had no real reason to believe that her marriage was foundering — still less that it was broken — and she had every intention of returning to England. I accepted her evidence that the letters were no longer in existence and I believed her testimony as to their contents. Thereafter, she made an attempt to work her passage back to England by answering an advertisement by an Army Officer who required a nurse to accompany his wife and small child to England and was willing to pay for the passage of such a nurse. Unfortunately, that attempt proved unsuccessful. As time passed by letters from her husband ceased, but she continued to receive letters at varying intervals from her husband's father. A number of these letters were produced in evidence before me. They are, quite clearly, affectionate letters written by a father to his daughter-in-law. The letters progressively demonstrated his increasing disapproval of his own son's conduct and behaviour.

In a letter dated the 21st December, 1954, the father-in-law stated that "Desmond has given up his job with the shipping firm and has moved to West Kirby, where he is living with this girl Betty". He refers to the fact that Betty had no affection for the petitioner's children and he, the father-in-law, was trying to get them put in an orphanage in Liverpool. Subsequent letters show that this was, in fact, done.

In a letter dated the 10th January, 1955, the father-in-law writes that Betty had herself had a baby and the Public Welfare authorities, who attended the confinement, recommended that the petitioner's children be removed from that environment. He refers to the fact that "over twelve months ago", he begged the respondent "to leave Betty while she had no claim on him . . . . but he refused", and the father-in-law adds: "Now she has a claim and I cannot see him leaving her".

A further letter dated the 4th September, 1955, states that "Betty now has two children", but the writer adds that he has not been able to bring himself to visit them.

All these letters are signed "Dad" and are written in the same affectionate strain. It is, of course, both regrettable and unfortunate that the only evidence of adultery produced in this case consists of these letters. I was informed, and I have no doubt that it is true, that the reason that further evidence was not obtained was because the petitioner was not financially in a position to bear the expense necessarily involved in obtaining such further evidence. On the other hand, I had no doubt whatsoever as to the authenticity and truth of those letters and they left me in no doubt that the respondent, over a substantial period of time, has been living in adultery with a woman named Betty by whom he had had two children. I found adultery proved.

3. But before this Court could grant the petition it required to be satisfied that it had jurisdiction to do so. The domicile of a married woman is that of her husband while the marriage subsists, even though the parties may be living apart. It followed, therefore, that for the purposes of this case the petitioner and the respondent were British subjects domiciled in the United Kingdom.

Subject to certain provisos contained therein, section 5(1) of the Divorce Ordinance, 1952, confers jurisdiction upon this Court ". . . . . to make a decree for the dissolution of a marriage . . . . where the parties to the marriage are British subjects domiciled in the United Kingdom, in any case where it would have such jurisdiction if the parties to the marriage were domiciled in the Federation". The petitioner, prior to her marriage, was domiciled in the Federation. The marriage was solemnized in the Federation and the petitioner was resident in the Federation at the time she presented her petition. I was, therefore, satisfied that if the parties to the marriage had not been British subjects I would have had jurisdiction to enter-

tain the petition. The relevant proviso to section 5(1) which requires consideration is paragraph (c), which enacts:—

"(c) the Court shall not grant any relief under this section except in cases where the petitioner resided in the Federation at the time of presenting the petition and the place where the parties to the marriage last resided together was in the Federation, or make any decrees of dissolution of marriage on the ground of adultery, cruelty or any crime except where the marriage was solemnized in the Federation or the adultery, cruelty or crime complained of was committed in the Federation;

I have given anxious consideration to the question whether that paragraph ought not to be construed as to mean that the Court shall not grant any relief of any kind under the section except in cases where:—

(1) the petitioner is residing in the Federation at the time of presenting the petition; and

(2) the place where the parties to the marriage last resided together was in the Federation;

and in addition to those two essential prerequisites, in cases where it is asked to grant a decree of dissolution of marriage on the ground of adultery or cruelty, there shall be the further requirement that either:—

(1) the marriage was solemnized in the Federation, *or*

(2) the act of adultery or cruelty alleged was committed in the Federation.

If that be the true construction to be placed upon the paragraph then clearly I have no jurisdiction to entertain the petition, since although the Petitioner satisfies two requirements this Court would be deprived of jurisdiction by reason of the fact that the place where the parties last resided together was not in the Federation but in England.

It seems to me, however, that such a construction entirely disregards the facts that the operative word used in the paragraph is not "and" but "or"; it is disjunctive and not conjunctive. If that be so, then the two parts of the paragraph must be read separately and in cases where a decree of dissolution on the ground of adultery or cruelty is sought then it is sufficient if either the marriage was solemnized in the Federation or the adultery was committed in the Federation. If that be the correct interpretation of the paragraph — and, in my view, it is — it follows that this Court had jurisdiction to entertain this petition.

The only remaining proviso for consideration is (d), which enacts that:—

"(d) the Court may refuse to entertain a petition in such a case if the petitioner is unable to show that by reason of his duty or employment, poverty or any other sufficient cause he or she is prevented from taking proceedings in the Court of the country in which he or she is domiciled and the Court shall so refuse if it is not satisfied that in the interests of justice it is desirable that the suit should be determined in the Federation."

I was entirely satisfied that the petitioner was prevented from taking proceedings in England on account of financial considerations and I was further satisfied that in the interests of justice it was desirable that this suit should be determined in the Federation.

4. There remained for consideration the question as to whether the petition was properly served upon both respondents, the respondent and the woman named. Service was ordered to be effected by sending copies of the petition and other relevant documents to the respondent at a specified address in England, by way of registered post.

It is clear that the 1st respondent received the petition, since a letter was produced in evidence before me addressed to the Petitioner's Solicitor emanating from a firm of Solicitors in Liverpool, in which they stated that they had been consulted by the 1st respondent with regard to the divorce papers, — and I quote from the letter itself — "served by you on him by letter dated the 14th August, 1957, and which were received by him on the 22nd instant". The Solicitors stated that they had advised the 1st respondent not to complete and return any of the forms, since it was their contention that this Court had no jurisdiction to grant any relief at all.

As regards the 2nd respondent, the woman named "Betty", a registered letter addressed to that name "Betty" at the same address as that of the 1st respondent was despatched to her at one and the same time. I think that I may properly assume that she received that letter and that service was properly effected upon her.

5. The petitioner has asked this Court to exercise its discretion in her favour. It is sufficient for me to say that I was fully satisfied that this was a proper case in which I could, and ought to, exercise that discretion in her favour and that her adulterous intercourse with the man with whom she is now living, and who she hopes to marry, was only commenced after it had become abundantly clear to her that her marriage with the 1st respondent was irretrievably ruined and broken.

It was for these reasons that I granted a decree nisi in this case.

Order accordingly.

PUBLIC PROSECUTOR v. NEOH BOON CHEONG

[C. A. (Good, Barakbah and Ong JJ.) July 14, 1959]

[Penang — F.M. Criminal Reference No. 2 of 1959]

Gaming — "Characters lottery" — Common Gaming Houses Ordinance, 1953 — Presumption under s.11 of assisting in a lottery then in progress — Whether prosecution must establish the particular contingency upon which the distribution depends — Object and intention of s.11 — Construction.

Evidence — Newspaper and its contents — Whether admissible — Presumption — Evidence Ordinance, 1950, s.81.

The defendant in this case was acquitted and discharged on the charge preferred against him under section 4(1)(c) of the Common Gaming Houses Ordi-